

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JANET L. VANCE**

Claimant

VS.

**DCCCA, INC.**

Respondent

AND

**CONTINENTAL WESTERN INS. CO.**

Insurance Carrier

Docket No. 1,038,232

**ORDER**

**STATEMENT OF THE CASE**

Respondent and its insurance carrier (respondent) requested review of the June 29, 2012, Award entered by Administrative Law Judge Thomas Klein. The Board heard oral argument on November 16, 2012. William L. Phalen, of Pittsburg, Kansas, appeared for claimant. Kirby A. Vernon, of Wichita, Kansas, appeared for respondent.

The Administrative Law Judge (ALJ) found claimant had a 14 percent functional impairment to the body as a whole as a result of her February 7, 2007, accident. The ALJ further found claimant had a 53.25 percent work disability based on a 100 percent wage loss and a 6.5 percent task loss.

The Board has considered the record and adopted the stipulations listed in the Award.

**ISSUES**

Respondent contends that claimant failed to prove she suffered permanent impairment to her left knee, left hip, low back and teeth. Additionally, respondent argues that any impairment claimant may have to her low back is the result of an intervening injury that occurred in November 2009. In the event the Board finds claimant suffered permanent impairment, respondent argues the permanent impairment is limited to her left lower

extremity and claimant is, therefore, not eligible for a work disability. Respondent also argues that claimant did not suffer any wage loss or task loss that was a direct result of the February 7, 2007, work injury.

Claimant asserts that she proved she suffered injuries to the body as a whole and is entitled to a work disability. Further, claimant argues there is no statute that requires a nexus between the work injury and the work disability.

The issues for the Board's review are:

(1) What is the nature and extent of claimant's injury, functional impairment and/or work disability?

(2) Did claimant prove an injury to the body as a whole, or is her disability, if any, limited to a scheduled injury?

(3) Did claimant sustain an intervening injury that precludes her from receiving compensation for a permanent injury to her low back?

(4) Must there be a nexus between claimant's work injury and her wage and task losses in order for her to be eligible for a work disability?

#### **FINDINGS OF FACT**

Claimant worked as a family support worker for respondent, a facility that takes care of foster children. On February 7, 2007, as she was leaving the office, she stepped off the curb. Her left foot slipped on ice, and she fell. She was holding two children at the time, and as she fell, she pushed the children away so she would not fall on them. She "face-planted into the ice," injuring her teeth, jaw, left knee, left hip, lower back, and ribs.<sup>1</sup>

Claimant initially received treatment from Dr. Phillip Bortmes, her personal physician, who prescribed medication. Claimant continued to ask respondent for medical treatment, but respondent either put off or denied her requests. After continuing to ask respondent for medical treatment and being denied, claimant became frustrated and left her employment with respondent in May 2007.

After she left her job at respondent, claimant was employed at three different businesses. She testified that for a four to five week period in July and August 2007, she worked as a maid for Shady Lane Motel. She said she earned about \$140 to \$150 per week with no fringe benefits. From May 2008 to August 2008, she worked as a groundskeeper at Crystal Creek Ranch. She worked 40 hours a week and earned \$7 per

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<sup>1</sup> R.H. Trans. at 12.

hour with no fringe benefits. Claimant's last job was at Valley Springs Youth Ranch, where she started working in September 2009 as a house parent. She worked full time, 40 hours a week, making \$7.50 per hour. She usually worked about 20 hours of overtime a week but was only paid her regular wages, not time and a half. She had no fringe benefits.

Claimant had worked at Valley Springs Youth Ranch about eight weeks when, in November 2009, she was attacked by some of the residents, receiving severe injuries, including a broken neck. She also suffered injuries to her lower back, which worsened the injuries she had suffered in the February 2007 accident. She testified her lower back condition continues to be worse after her assault than it was before. She denied any injury to her left knee or her mouth in the assault. Claimant has been unable to work since the assault and is now receiving Social Security disability benefits.

Dr. Edward Prostic, a board certified orthopedic surgeon, examined claimant on February 11, 2008, at the request of claimant's attorney. Claimant gave Dr. Prostic a history of her accident and treatment by Dr. Bortmes. She told Dr. Prostic she left her employment with respondent and her subsequent employment with a motel because she was unable to tolerate her symptoms. She was unemployed at the time of the examination.

Claimant denied any preexisting musculoskeletal impairment and any subsequent traumatic events. Her chief complaint was to her left knee. She said she had pain going down to the heel that was made worse with prolonged standing or walking and ascending stairs. She was unable to squat, kneel, run, jump or dance. She has swelling, clicking, popping and pseudo locking. Claimant also complained of pain in both sides of her jaw in the temporomandibular joint (TMJ) areas and headaches associated with the jaw pain. She had painful popping if she yawned. She believed she chipped two teeth when she fell. Claimant also told Dr. Prostic she had pain in both of her hips.

Dr. Prostic said the only findings in his physical examination with regard to claimant's lumbar spine were the subjective finding of tenderness at the left sacroiliac joint and her significant degeneration showed by x-rays. He acknowledged that most, if not all, of the degeneration more than likely preceded the work accident. As part of Dr. Prostic's examination, he took x-rays of claimant's lumbar spine and left knee.

After reviewing claimant's medical records, history, and x-rays and performing a physical examination, Dr. Prostic diagnosed claimant with trochanteric bursitis, lumbar sprain and strain, and patellofemoral dysfunction of the left knee. He opined claimant's injuries were caused or permanently aggravated by her work-related injury on February 7, 2007. Dr. Prostic did not know if claimant had bursitis of the hip before the February 2007 accident, but he assumed she did not and that the bursitis is related to the work accident. Dr. Prostic believed claimant should have steroid injections to the trochanteric bursa, anti-inflammatory medication, and therapeutic exercises. Dr. Prostic said claimant should seek additional help for her dental issues and TMJ issues.

Based on the *AMA Guides*,<sup>2</sup> Dr. Prostic rated claimant as having a 5 percent permanent partial impairment to the body as a whole for lumbar strain/sprain and trochanteric bursitis, and a 7 percent permanent partial impairment to the left lower extremity for the patellofemoral dysfunction, which converts to 3 percent to the whole body. Her ratings would combine for a total 8 percent impairment to the whole body. Dr. Prostic's assignment of permanent partial impairment was done on November 12, 2010, and was based upon his evaluation performed more than two years before.

Dr. Prostic did not place any restrictions on claimant but said that activities having a significant amount of squatting or climbing would aggravate her knee, and he recommended she not do those. He reviewed the task list prepared by Karen Terrill. Of the 30 tasks on the list, he opined that claimant was unable to perform 2 for a 6.66 percent task loss.

Claimant was eventually seen for her orthopedic problems by Dr. Patrick Lecorps, a board certified orthopedic surgeon in Poplar Bluff, Missouri. He first saw her on April 9, 2009, at which time he had her complete a pain diagram. On the pain diagram, claimant indicated she had pain in her medial knee joint on the left side. She did not indicate on the diagram that she had a problem with her spine. Dr. Lecorps also had claimant fill out a form in which she marked symptoms she had noticed since her accident. Claimant marked that she had lower back pain, left hip pain and left knee pain. Dr. Lecorps said most of the time he does not look at that form before he sees the patient because he expects the patient to tell him what part of their body hurts. Dr. Lecorps stated that as far as he knew, claimant only came in for her left knee problems. She did not verbally mention back pain in the visit, so he did not examine her low back. After his examination, Dr. Lecorps thought claimant had bursitis in her knee and recommended she have an injection and anti-inflammatory medication.

Dr. Lecorps saw claimant a second time on April 30, 2009. Her injection had not helped with her knee pain. Her complaints had not changed, and she still did not make any complaints about her back. Dr. Lecorps ordered an MRI of claimant's left knee, which was performed on May 7, 2009. The MRI showed claimant had intact menisci and cruciate and collateral ligaments. The MRI also showed mild osteoarthritis in her medial, patellofemoral and lateral compartments. Dr. Lecorps saw claimant again on May 28, 2009, at which time he put her on Celebrex. At that time, he released her to return to work without restrictions, and she was told to return as needed. Claimant did not return.

Claimant was also authorized to see a dentist, Dr. Ricky Cornish, who is licensed in the states of Missouri and Arkansas. He first examined claimant on April 23, 2009. Claimant told him she had fallen at work and had jaw joint pain, had chipped some teeth,

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<sup>2</sup> American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

and had to have some teeth extracted. In Dr. Cornish's examination, he found claimant was missing teeth nos. 2, 3, 14, 16, 17, 19 and 32.<sup>3</sup> Claimant told him that two lower left molars, nos. 17 and 19, had been extracted as a result of the fall by a traveling dentist before her examination by Dr. Cornish.<sup>4</sup> Claimant told Dr. Cornish she had chipped teeth nos. 9, 10, 11 and 12 in the fall.

During his examination, Dr. Cornish found that claimant had several areas of decay in teeth on both her right and left sides. Dr. Cornish told claimant she had extensive decay in tooth no. 12 and needed a root canal, build up and crown in order to save the tooth. Claimant told Dr. Cornish that tooth no. 12, which she claimed had been chipped when she fell, was getting worse. Dr. Cornish believed claimant had vertical fractures of tooth no. 12, which could have been caused by the trauma. But claimant had extensive decay, and Dr. Cornish could not say whether the decay in tooth no. 12 was related to the fall. Although trauma that breaks a tooth can make a tooth more susceptible to decay, Dr. Cornish said decay is caused by bacteria and contributing factors could be sugar and poor dental hygiene.

As well as the work Dr. Cornish did on tooth no. 12, he fitted claimant with a three-unit bridge on teeth nos. 13, 14 and 15 and a three-unit bridge on teeth nos. 18, 19 and 20. This was done to restore and repair missing teeth nos. 14 and 19. Dr. Cornish indicated he is not in a position to say whether any of the work he performed on claimant was worked related. Dr. Cornish is not familiar with Kansas workers compensation laws or Kansas' legal definition of an accident or personal injury by accident. He is not familiar with the *AMA Guides* and has never been asked to give a rating utilizing the *Guides*.

When claimant was examined on April 23, 2009, she told Dr. Cornish her TMJ pain was not as bad as it had once been, but her jaws continued to be uncomfortable. Claimant told Dr. Cornish she had a habit of clenching and grinding and has had TMJ pain since her accident. Dr. Cornish's evaluation showed that when claimant opened her mouth, her lower jaw shifted slightly to the left. There was no pain, tenderness to palpation, creaking, popping or crepitus. Her ability to open her mouth was not impaired, but she had visible signs of clenching on her teeth, primarily based on wear facets that were flat, worn spots on the enamel. These are normally associated with clenching and grinding and appeared to be advanced for her age. Dr. Cornish recommended an occlusal splint that would recalibrate the muscle functions to relieve the TMJ pain. However, Dr. Cornish said he could not fit her with a splint until she had all her dental work done, including the restoration

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<sup>3</sup> Teeth nos. 2 and 3 are on the upper right side. Tooth no. 16 is on the upper left side. Teeth nos. 17 and 19 are on lower left side, and tooth no. 32 is on the lower right side.

<sup>4</sup> Claimant had earlier testified that she had tooth no. 14, an upper left molar, and tooth no. 19, a bottom left molar, extracted as a result of the accident. Claimant testified the traveling dentist was from Heartland Dental Care. The dentist was not identified by name, and records were not admitted to the record and were not available to Dr. Cornish.

on the teeth on the right side of her mouth. Claimant did not return to Dr. Cornish after the completion of the work on tooth no. 12 and the two bridges, so Dr. Cornish has not had an opportunity to fit her with an occlusal splint.

Dr. Bieri, an independent medical examiner, evaluated claimant on September 30, 2010, at the request of claimant's attorney. Claimant gave a history of falling, twisting her left knee, and landing on her face. She told Dr. Bieri of having persistent pain in her lower back and left lower extremity and was unable to work for respondent after May 2007. Claimant had dental injuries and eventually underwent dental restorations. She developed TMJ syndrome.

With respect to claimant's left knee, there was no surgical intervention. Dr. Bieri thought she had one injection. Aside from subjective complaints, Dr. Bieri did not find any objective evidence of any injury to claimant's left knee.

Claimant told Dr. Bieri about her assault in 2009 that resulted in a cervical fracture requiring subsequent cervical fusion. Claimant said the assault also involved her lower back but did not involve her left knee.

After Dr. Bieri's physical examination, he opined that while working for respondent, claimant suffered injuries primarily to her face and left knee. He found claimant had disruption of dentition that required dental reconstruction and restoration and that she suffered from residual bilateral TMJ syndrome. He also diagnosed claimant with patellofemoral pain involving the left knee with aggravation of degenerative joint disease. In addition, he found claimant suffered soft-tissue injury to her lower back and left hip. Dr. Bieri concluded these injuries were a result of claimant's work accident of February 7, 2007.

Based on the *AMA Guides*, Dr. Bieri rated claimant as having a 10 percent left lower extremity impairment for patellofemoral pain and aggravation of degenerative joint disease, which translates to a 4 percent whole person impairment. He rated claimant as having a 5 percent impairment to the whole person for TMJ syndrome with pain and loss of supporting dentition. Claimant's combined whole person impairment was 9 percent.

Dr. Bieri stated that there is no way to rate TMJ syndrome in the *AMA Guides*. He said there are two ways to rate claimant's facial injuries. One is on the pain from the fifth cranial nerve and the other is based on loss of supporting structure for the face. It was Dr. Bieri's opinion that these were represented by a 5 percent impairment.

Dr. Bieri noted claimant had sustained an injury to her spine as a result of the February 7, 2007, work-related injury but that she had an intervening injury before he had an opportunity to examine her. He also noted Dr. Prostin had examined claimant before the intervening injury and rated claimant's lumbar spine with a 5 percent whole person impairment. If Dr. Prostin's 5 percent rating was added to Dr. Bieri's 9 percent rating,

claimant's total whole body impairment would be 14 percent. Dr. Bieri opined that claimant sustained a 14 percent impairment to the body as a whole based upon the *AMA Guides*. Dr. Bieri said he is presuming the 5 percent assigned by Dr. Prostin is reasonable and appropriate. Dr. Bieri said the impairment ratings he set out were the result of claimant's February 7, 2007, injury.

Dr. Bieri said at the time he saw claimant, she was under no restrictions, and he did not impose any permanent restrictions. Nevertheless, Dr. Bieri reviewed the task list prepared by Karen Terrill, and of the 30 tasks on the list, he opined claimant is unable to perform 3 for a 10 percent task loss. He believed this task loss was a result of claimant's February 7, 2007, injury. Dr. Bieri also reviewed the task list prepared by Steven Benjamin. Of the 37 tasks on that list, he opined claimant would be unable to perform 1 task for a 3 percent task loss. Dr. Bieri would not say that claimant's TMJ would prevent her from working.

Karen Terrill, a rehabilitation consultant, interviewed claimant by telephone on January 13, 2011. Ms. Terrill compiled a list of 30 tasks claimant performed in the 15-year period before her work-related injury.

Steve Benjamin, a vocational rehabilitation consultant, interviewed claimant by telephone on April 28, 2011. He prepared a list of 37 unduplicated tasks claimant had performed in the 15-year period before her work-related injury at respondent. Because none of the medical reports Mr. Benjamin had in his possession mentioned that claimant had any restrictions, he opined claimant should be able to go back to a similar job as the one she had at the time of injury and make the same or a comparable wage.

#### **PRINCIPLES OF LAW**

K.S.A. 2006 Supp. 44-501(a) states in part: "In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends." K.S.A. 2006 Supp. 44-508(g) defines burden of proof as follows: "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

An employer is liable to pay compensation to an employee where the employee incurs personal injury by accident arising out of and in the course of employment.<sup>5</sup>

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<sup>5</sup> K.S.A. 2006 Supp. 44-501(a).

Whether an accident arises out of and in the course of the worker's employment depends upon the facts peculiar to the particular case.<sup>6</sup>

The two phrases arising "out of" and "in the course of" employment, as used in the Kansas Workers Compensation Act, have separate and distinct meanings; they are conjunctive and each condition must exist before compensation is allowable.

The phrase "out of" employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Thus, an injury arises "out of" employment if it arises out of the nature, conditions, obligations, and incidents of the employment. The phrase "in the course of" employment relates to the time, place, and circumstances under which the accident occurred and means the injury happened while the worker was at work in the employer's service.<sup>7</sup>

An accidental injury is compensable under the Workers Compensation Act even where the accident only serves to aggravate a preexisting condition.<sup>8</sup> The test is not whether the accident causes the condition, but whether the accident aggravates or accelerates the condition.<sup>9</sup> An injury is not compensable, however, where the worsening or new injury would have occurred even absent the accidental injury or where the injury is shown to have been produced by an independent intervening cause.<sup>10</sup>

K.S.A. 44-510d(a) states:

(a) Where disability, partial in character but permanent in quality, results from the injury, the injured employee shall be entitled to the compensation provided in K.S.A. 44-510h and 44-510i and amendments thereto, but shall not be entitled to any other or further compensation for or during the first week following the injury unless such disability exists for three consecutive weeks, in which event compensation shall be paid for the first week. Thereafter compensation shall be paid for temporary total loss of use and as provided in the following schedule, 66 2/3% of the average gross weekly wages to be computed as provided in K.S.A. 44-511 and amendments thereto, except that in no case shall the weekly

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<sup>6</sup> *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 278, 899 P.2d 1058 (1995).

<sup>7</sup> *Id.* at 278.

<sup>8</sup> *Odell v. Unified School District*, 206 Kan. 752, 758, 481 P.2d 974 (1971).

<sup>9</sup> *Woodward v. Beech Aircraft Corp.*, 24 Kan. App. 2d 510, Syl. ¶ 2, 949 P.2d 1149 (1997).

<sup>10</sup> *Nance v. Harvey County*, 263 Kan. 542, 547-50, 952 P.2d 411 (1997).



compensation be more than the maximum as provided for in K.S.A. 44-510c and amendments thereto. If there is an award of permanent disability as a result of the injury there shall be a presumption that disability existed immediately after the injury and compensation is to be paid for not to exceed the number of weeks allowed in the following schedule:

.....  
(16) For the loss of a leg, 200 weeks.

.....  
(23) Loss of a scheduled member shall be based upon permanent impairment of function to the scheduled member as determined using the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein.

K.S.A. 44-510e(a) states in part:

Permanent partial general disability exists when the employee is disabled in a manner which is partial in character and permanent in quality and which is not covered by the schedule in K.S.A. 44-510d and amendments thereto. The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury. In any event, the extent of permanent partial general disability shall not be less than the percentage of functional impairment. Functional impairment means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein. An employee shall not be entitled to receive permanent partial general disability compensation in excess of the percentage of functional impairment as long as the employee is engaging in any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury.

In *Bergstrom*,<sup>11</sup> the Kansas Supreme Court stated: "K.S.A. 44-510e(a) contains no requirement that an injured worker make a good-faith effort to seek postinjury employment to mitigate the employer's liability." In *Tyler*,<sup>12</sup> the Kansas Court of Appeals stated: "Absent a specific statutory provision requiring a nexus between the wage loss and the injury, this court is not to read into the statute such a requirement."

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<sup>11</sup> *Bergstrom v. Spears Manufacturing Company*, 289 Kan. 605, 610, 214 P.3d 676 (2009).

<sup>12</sup> *Tyler v. Goodyear Tire & Rubber Co.*, 43 Kan. App. 2d 386, 391, 224 P.3d 1197 (2010).

Where respondent is asserting an intervening injury, it is respondent's burden to prove that the intervening injury was the cause of claimant's permanent impairment rather than the work-related injuries.<sup>13</sup>

### ANALYSIS

The February 7, 2007, slip and fall accident is not in dispute. Respondent admits claimant suffered personal injury by accident arising out of and in the course of her employment. Respondent denies, however, that any of claimant's injuries were permanent or resulted in any permanent impairment of function. Respondent failed to voluntarily provide claimant with authorized medical treatment, and so she sought treatment on her own. Initially, claimant went to her personal physician, Dr. Bortmes. Little is known about what complaints were described to him, but it is known that Dr. Bortmes prescribed claimant medication for pain. It is not known what pain claimant was experiencing in particular or what conditions or injuries Dr. Bortmes diagnosed. We have claimant's testimony that she was experiencing problems with her teeth, jaw, left knee, left hip, low back and ribs. The dates of claimant's treatment with Dr. Bortmes are also unknown, and it is unknown how long claimant treated with Dr. Bortmes. It does not appear that claimant was taken off work. We know claimant continued to work for respondent until May 2007. Thereafter, claimant worked brief stints with three employers. No physician has ever taken claimant off work or given her restrictions for her February 7, 2007, injuries, at least not before Dr. Prostic's deposition testimony on May 3, 2011. Claimant has been unable to work since her subsequent injury in November 2009 at the Valley Springs Youth Ranch.

When claimant first saw Dr. Prostic on February 11, 2008, her chief complaint was left knee pain. Dr. Prostic diagnosed patellofemoral dysfunction of the left knee. He did not recommend any particular treatment for the knee but did recommend anti-inflammatory medication, therapeutic exercise and steroid injections for the hip bursitis. He also recommended claimant see a specialist who treats TMJ.

Claimant did see an unnamed dentist, who pulled two of her teeth, and saw Dr. Cornish, who recommended additional treatment. Dr. Cornish could not say whether claimant's problems were due to trauma or personal hygiene. She had significant decay in tooth no. 12, which claimant said was chipped in her fall, and in other teeth. Claimant failed to follow up with Dr. Cornish for treatment.

When claimant saw Dr. Lecorps, an orthopedic surgeon, in April 2009, her only complaint was her left knee. Dr. Lecorps diagnosed bursitis. An MRI of the left knee did not reveal any significant injury. It showed mild osteoarthritis. He released her without

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<sup>13</sup> *Desautel v. Mobile Manor Inc.*, Nos. 262,971 & 262,972, 2002 WL 31103972 (Kan. WCAB Aug. 29, 2002), *cf. Palmer v. Lindberg Heat Treating*, 31 Kan. App. 2d 1, 4, 59 P.3d 352 (2002).

restrictions in May 2009. Claimant was instructed to return as needed. She did not return to Dr. Lecorps.

Claimant's most recent examination was by Dr. Bieri in September 2010. He found no objective evidence of injury to claimant's left knee. Nevertheless, he rated claimant's knee condition as 10 percent to the lower extremity for patellofemoral pain and aggravation of degenerative joint disease. Dr. Prostin rated the left knee condition at 7 percent to the lower extremity for patellofemoral dysfunction. Other than her teeth and jaw, claimant's left knee condition is the only area where claimant has had consistent complaints documented in the medical records. The Board finds claimant has proven a permanent injury to her left knee resulted from her fall. Averaging the two rating opinions, the Board finds claimant has a 8.5 percent impairment of function to her leg.

Claimant's dental and jaw conditions are problematic. Although claimant alleges she chipped several teeth in the fall, she has not been consistent about which teeth were injured. Moreover, the testimony of the only dentist to testify, Dr. Cornish, does not establish trauma as the cause of claimant's dental problems as opposed to decay. Likewise, the causal connection of TMJ to the fall is tenuous. In fact, Dr. Cornish does not appear confident in making a diagnosis of TMJ. The Board is not persuaded that claimant has met her burden of proving her dental and jaw problems are due to the work-related accident.

Finally, with respect to claimant's hips and low back conditions, the Board finds these injuries were temporary and not permanent. Dr. Prostin noted her chief complaint was to her knee. She did not complain to Dr. Lecorps about her back at any of her three visits. She did complete a questionnaire that asked for all symptoms she had experienced since her injury. Claimant answered yes to several areas, including back, left hip and left knee pain. But on the pain drawing she completed on April 9, 2009, regarding her current complaints, she only listed knee pain. This indicated that her other symptoms had resolved. Dr. Bieri's examination was after claimant's brutal attack by the youth. Claimant's injuries from that attack included her back. Dr. Bieri did not see claimant before that attack and deferred to Dr. Prostin as to what conditions preexisted the November 2009 injuries. Dr. Prostin examined claimant in February 2008. Claimant was examined by Dr. Lecorps in April 2009. It appears claimant's primary concern at both of those examinations was her left knee. The Board concludes that all but claimant's left knee injury had resolved by the time claimant was seen by Dr. Lecorps.

**CONCLUSION**

Claimant has an 8.5 percent functional impairment to her left lower extremity at the level of the leg.

**AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Thomas Klein dated June 29, 2012, is modified to find she has an 8.5 percent scheduled injury to her left lower extremity at the level of the leg.

Claimant is entitled to 17 weeks of permanent partial disability compensation, at the rate of \$483 per week, in the amount of \$8,211, for a 8.5 percent loss of use of the left leg, making a total award of \$8,211, which is due and payable in one lump sum less amounts previously paid.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of December, 2012.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

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